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U.S. Citizenship and Immigration Services

[redacted]

MAR 26 2004

FILE: [redacted] Office: BALTIMORE, MD Date:

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director for Services, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who was found to be inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant is married to a United States citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). He seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may remain in the United States with his spouse and children.

The acting district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *See* Decision of the Acting District Director, dated April 4, 2003.

On appeal, counsel contends that Citizenship and Immigration Services did not consider all of the new evidence along with the previously presented evidence establishing that the applicant's wife and children will suffer extreme hardship if the applicant is removed from the United States. *See* Request for Reopening and Reconsideration, or in the Alternative, an Appeal to the Administrative Appeals Unit, dated May 5, 2003.

In support of these assertions, counsel submits a copy of the U.S. birth certificate of the applicant's child; copies of tax documents for the applicant and his spouse; a letter verifying the employment of the applicant; a letter from the doctor treating the applicant's spouse and copies of the medical records of the applicant's spouse. The entire record was considered in rendering a decision on the appeal.

Section 212(a)(2)(A) of the Act states in pertinent part:

> (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
>
> > (I) a crime involving moral turpitude . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) of the Act provides, in pertinent part:

> (h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -
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> . . . .
>
> > (1)(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .

A section 212(h) waiver of the bar to admission resulting from section 212(a)(2)(A) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, child or parent of the applicant. Any hardship suffered by the applicant himself is irrelevant to waiver proceedings under section 212(h) of the Act. Once extreme hardship is established, it is but one favorable factor to be

considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

On appeal, counsel submits a letter from the physician treating the applicant's wife for Hepatitis C. The letter indicates that the applicant's wife began a course of treatment for the virus on March 15, 2003. The physician indicates that the treatment will last nine months at the end of which the virus should be eradicated. *See* Letter from V.P. Chandar, MD, dated April 17, 2003. Counsel indicates that the applicant's wife will possibly require a liver transplant, however the letter from Dr. Chandar clearly states that a transplant would only be necessary if the applicant's wife did not undergo treatment as prescribed or proved unresponsive to the treatment. *Id.* Counsel further asserts that the applicant's wife is unable to relocate to El Salvador due to her need to receive treatment and requires the applicant's presence while she is undergoing treatment, as she is unable to work as a result of the treatment. *See* Request for Reopening and Reconsideration, or in the Alternative, an Appeal to the Administrative Appeals Unit, dated May 5, 2003.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra,* held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported.

According to the letter from the physician providing treatment to the applicant's wife, her course of treatment was scheduled to be completed in mid-December 2003. *See* Letter from V.P. Chandar, MD. As a result of the treatment, the applicant's spouse is currently either free from the Hepatitis C virus or her doctor has prescribed a new course of treatment. The AAO finds that a determination of extreme hardship in the present application turns on the medical status of the applicant's spouse. The AAO recognizes that the applicant's wife would endure hardship as a result of separation from the applicant. However, her situation, if she is cured of Hepatitis C, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship. The record does not offer current documentation demonstrating that the course of treatment undertaken by the applicant's wife did not relieve her of the disease. Therefore, a finding of extreme hardship cannot be made based on the record as it now stands.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.